"There being no proof of fault on the part of the shipowner, defendant's motion for a directed verdict should have been granted" (Pet. 16).

Argument

The finding of the Court of Appeals is supported by all the evidence in the case and is clearly correct. No substantial legal question or conflict of decisions is presented. Review by this Court is, therefore, unwarranted.

POINT I

THE COURT OF APPEALS CORRECTLY RULED THAT THERE WAS NO FAULT ON THE PART OF THE SHIPOWNER AND THAT, CONSEQUENTLY, IT WAS NOT LIABLE UNDER THE JONES ACT.

This action is brought under the Jones Act and not under general maritime law relating to unseaworthiness (Pet. 3; D. App. 94).

The gist of an action under the Jones Act is negligence. In order to maintain action under the Act, the seaman must allege and prove negligence of the owner of the vessel, or her officers, agents or employees. *Jamison* v. *Encarnacion*, 281 U. S. 635; *De Zon* v. *American President Lines, Ltd.*, 318 U. S. 660.

Petitioner contends, however, that the shipowner has an absolute duty to anticipate and provide against negligence on the part of the petitioner himself and that the shipowner is absolutely liable for injuries caused by fortuitous or negligent action of petitioner regardless of the safeness and reliability of the appliance or working conditions furnished by the ship. In practical terms, this amounts to holding a shipowner an insurer for all shipboard injuries, an unprecedented basis for maritime indemnity. Decisions cited by petitioner were all holdings that shipowner is liable

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955
No. ~~831~~ 59

HENRY FERGUSON,
Petitioner,

v.

MOORE-McCORMACK LINES, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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